HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.19754 OF 2000

ORDER:

The petitioner prays for Certiorari to call for the records leading up to and inclusive of the order of the 1st respondent in Proceedings No.BCW3/1211/96 dated 17.08.2000 and quash the same as illegal and further prays for confirmation of assignment in favour of petitioner in DKT No.105/4/1339 dated 10.04.1990.

The subject matter of the assignment is an extent of Ac.4-60 cents in Sy.No.339/1A of C.M.Khandriga Village, Gudipala Mandal, Chittoor District. The same has been subject matter of assignment in favour of one K.Bala Krishna Reddy vide DKT No.985/4/88 dated 30.09.1978. The assignment in favour of Bala Krishna Reddy was cancelled through proceedings No.A/757/88 dated 26.03.1989. On 10.04.1990, the 3rd respondent assigned the petition land in favour of petitioner. The petitioner claims to have brought the assigned land under cultivation and is in actual and physical possession ever since 1990.

The original assignee filed appeal against the order dated 26.03.1989 before the Joint Collector, Chittoor. Through proceedings No.B2/2650/92 dated 15.04.1992, the Joint Collector, Chittoor cancelled the assignment of petitioner. The grievance was carried by way of revision before the Commissioner of Land Revenue, who allowed the same on 22.06.1994. It is contextual to refer to the holistic consideration of both the issues by the Commissioner of Land Revenue through order dated 22.06.1994. The relevant findings of 1st respondent are as follows:

> "I, therefore, find that the cancellation of the assignment made in favour of Sri Balakrishna Reddy by the Mandal Revenue Officer, is in order and therefore the order of the Joint Collector setting aside the order of the Mandal Revenue Officer needs to be

set aside. The appeal is accordingly allowed.

There is however one matter which requires to be enquired into by the Joint Collector. In the revision petition before the Commissioner of Land Revenue, Sri Balakrishna Reddy had alleged that Smt.Salamma, is not a landless poor person, that she is owning Ac.4-78 in S.No.224/1 and Ac.19.49 in S.No.296 of Jamudilindlu alias Kothakota that she is a wealthy pattadar and that she is not a resident of C.M.Khandriga, being a resident of Kothakota. This has not been specifically denied by Smt.Salamma in the revision petition before me. This matter is, therefore, referred to the Joint Collector for disposing of after due enquiry and after giving due notice to the concerned persons.

With the above observations, the appeal is allowed."

From the above, it is clear that the 1st respondent affirmed the cancellation of assignment in favour of Bala Krishna Reddy. The matter was remanded to the Joint Collector, Chittoor for enquiry into petitioner's eligibility for assignment of petition land and as to whether she is native of C.M.Kandriga or not. On remand, the Joint Collector, Chittoor through order dated 20.11.1996 found that the petitioner is not resident of C.M.Kandriga and is a wealthy pattadar. The same was confirmed by the 1st respondent through the impugned order.

Heard learned counsel for the petitioner and learned Government Pleader.

Sri P.Nagender Reddy, learned counsel for the petitioner, contends that the case of petitioner for assignment was considered with reference to applicable Board Standing Orders and the assignment was made on 26.03.1989 on the ground that the petitioner is landless poor. The findings of the Joint Collector, Chittoor, as confirmed by the 1st respondent, do not in any way show that the

petitioner owns any land and the land owned by either the family or her husband without reference to the clear mandate under the Board Standing Order has been included
to hold that the petitioner is a wealthy pattadar. It is further contended that the assigned land is also included to arrive at the total holding, which is impermissible both in law and fact. Further, it is contended that there is no documentary evidence to include these survey numbers to the account of petitioner to give a finding that the petitioner is a wealthy pattadar. The learned counsel finally contends that the petitioner, being a woman and the assignment was made to her in the year 1989, the consideration of the facts by the authorities should be contemporaneous to the period of assignment and ought not to be with reference to the changed circumstances.

For the purpose of appreciating whether the finding recorded by the respondents viz., whether she is a wealthy pattadar or not, this Court directed production of record. The matter underwent several adjournments. Except reiteration of report stated to have been submitted by the Mandal Revenue Officer in support of the conclusions arrived at by the respondents, record could not be produced.

This Court is concerned with the legality of assignment in favour of petitioner in the year 1989. The original assignee while being unsuccessful in canvassing the cancellation of assignment objected assignment in favour of petitioner. The objection has been further taken up for enquiry by the respondents. In such a situation, the respondents instead of canceling the assignment in favour of petitioner on the report of the Mandal Revenue Officer ought to have given a fair and reasonable opportunity to the petitioner to explain whether she is a landless poor, whether she has got any right, interest etc., in various survey numbers referred to in the report of the Mandal Revenue Officer. While determining whether a person is a small farmer/landless

poor, it is clear from the Board Standing Orders that the principle of *spes successionis* is taken note of by the authorities. In the case on hand, the findings have been recorded without considering the issue on the lines suggested above.

On the ground that findings have been rendered without documentary evidence, the orders impugned are set aside. The matter is remitted to the Joint Collector, Chittoor for fresh consideration in accordance with the Board Standing Orders. The Joint Collector supplies a copy of the report of the Mandal Revenue Officer to the petitioner within a period of four weeks from the date of receipt of a copy of order and on receipt of the report, the petitioner is given a further time of four weeks to file her reply/explanation and thereafter the Joint Collector decides the matter and passes appropriate orders in accordance with law.

With the above observation, the writ petition is allowed. The impugned order is set aside. Matter is remanded to the Joint Collector. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

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S.V.BHATT,J

01st August, 2014

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